

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE,

v.

PAUL E. WEBER,

Defendant.

)  
)  
)  
)  
)  
)  
)

I.D. No. 0408022175

Date Submitted: July 3, 2023

Date Decided: August 29, 2023

**MEMORANDUM OPINION**

*Defendant's Motion for Judicial Discretion:* **DENIED**

*Defendant's Motion for Evidentiary Hearing:* **DENIED**

*Defendant's Motion for Correction of Illegal Sentence:* **DENIED**

*Defendant's Motion to Seal Record:* **DENIED**

Andrew J. Vella, Deputy Attorney General, Department of Justice, 820 N. French Street, Wilmington, Delaware 19801. Wilmington, Delaware. Attorney for the State of Delaware.

Paul E. Weber, James T. Vaughn Correctional Center, 1181 Paddock Road, Smyrna, Delaware, *pro se*.

**JURDEN, P.J.**

## **I. INTRODUCTION**

Before the Court is Defendant Paul Weber’s “Motion for Judicial Discretion Pursuant to Senate Concurrent Resolution No. 32,” “Motion for Evidentiary Hearing,” “Motion for Correction of Illegal Sentence,” and “Motion to Seal Record.” For the reasons set forth in this Memorandum Opinion, Defendant’s motions are **DENIED**.

## **II. BACKGROUND**

### **A. Factual and Procedural History<sup>1</sup>**

On September 20, 2004, a grand jury indicted Weber on charges of Attempted Robbery First Degree and Attempted Carjacking First Degree.<sup>2</sup> Following a six-day jury trial in March 2004, Weber was convicted of both charges.<sup>3</sup> Weber was declared a habitual offender with respect to Attempted Robbery First Degree,<sup>4</sup> and on January 11, 2008, he was sentenced to a total of 27 years of unsuspended Level V time.<sup>5</sup>

Weber filed a direct appeal with the Supreme Court on February 8, 2008.<sup>6</sup>

---

<sup>1</sup> For a complete recitation of the facts surrounding the underlying crime, see *Weber v. State*, 971 A.2d 135, 140 (Del. 2009) [hereinafter *Weber I*] and *Weber v. State*, 38 A.3d 271, 273-74 (Del. 2012) [hereinafter *Weber II*].

<sup>2</sup> Indict., D.I. 2.

<sup>3</sup> First Jury Trial, D.I. 18.

<sup>4</sup> Def. Declared Habitual Offender, D.I. 84. See 11 Del. C. § 4214(a)(2004).

<sup>5</sup> Jan. 11, 2008 Sent. Order, D.I. 85. Weber’s sentence was as follows: as to Attempted Robbery First Degree, 25 years at Level V, and as to Attempted Carjacking First Degree, 3 years at Level V, suspended after 2 years for 6 months at Level IV Home Confinement. *Id.*

<sup>6</sup> First Notice of Appeal, Case No. 74, 2008, Trans ID. 18506899.

The Supreme Court issued an Opinion on April 22, 2009.<sup>7</sup> With respect to Attempted Carjacking First Degree, the Court affirmed the judgment of the Superior Court; with respect to Attempted Robbery First Degree, however, the Court reversed and remanded Weber's case for a new trial on that charge only.<sup>8</sup>

A new trial was held from April 13 to April 15, 2010, and the jury convicted Weber of Attempted Robbery First Degree.<sup>9</sup> Upon the State's motion,<sup>10</sup> the Court declared Weber a habitual offender pursuant to 11 *Del. C.* § 4214(a)(2004), and on December 17, 2010, he was sentenced to a total of 25 years of unsuspended Level V time.<sup>11</sup>

Weber appealed his conviction to the Supreme Court, and on February 21, 2012, the Supreme Court affirmed the judgment of the Superior Court.<sup>12</sup> From the time the Supreme Court affirmed Weber's sentence, he has filed countless exhibits

---

<sup>7</sup> See generally *Weber I*. See also D.I. 97.

<sup>8</sup> *Weber I*, at 143, 162. Defendant's conviction was reversed only as to Attempted Robbery First. The Court found that the trial court's failure to instruct the jury on a lesser included offense constituted reversible error because there was "sufficient evidence to support an acquittal of the [Attempted] First Degree Robbery charge and a conviction of the lesser included offense of Offensive Touching." *Id.* at 142.

<sup>9</sup> Second Jury Trial, D.I. 137.

<sup>10</sup> See generally State's Mot. to Declare Def. Habitual Offender, D.I. 143. The State filed its motion on July 16, 2010. *Id.*

<sup>11</sup> Dec. 17, 2010 Sent. Order, D.I. 160. Effective December 17, 2010, Weber's sentence was as follows: as to Attempted Robbery First Degree, 25 years at Level V, with credit for 2 years and 352 days previously served, followed by 6 months at Level III. *Id.* The Court modified Weber's sentence on February 27, 2013, to reflect a change in the effective date and credit Weber with 4 years, 5 months, and 38 days previously served. Feb. 27, 2013 Sent. Order, D.I. 173. All other terms of his sentence were unchanged. *Id.*

<sup>12</sup> See generally *Weber II*. See also D.I. 168.

and appendices, 11 memoranda,<sup>13</sup> 110 letters,<sup>14</sup> and 44 motions.<sup>15</sup> Of those motions, 5 sought postconviction relief under Superior Court Criminal Rule 61,<sup>16</sup> 6 sought correction of an illegal sentence pursuant to Rule 35(a),<sup>17</sup> and 1 sought modification or reduction of sentence pursuant to Rule 35(b).<sup>18</sup>

## **B. Weber's Current Motions**

Before the Court are five of Weber's motions, all filed since the Supreme Court affirmed the Court's June 8, 2022 Order on March 13, 2023.<sup>19</sup> On April 27, 2023 Weber filed a motion with the Court, titled "Motion for Judicial Discretion Pursuant to Senate Concurrent Resolution No. 32" ("Motion for Judicial

---

<sup>13</sup> May 6, 2013 Mem., D.I. 177; June 3, 2013 Mem., D.I. 182; Aug. 6, 2013 PCR Aff., D.I.187; Apr. 22, 2014 Suppl. Mem., D.I. 203; Jan. 1, 2015 Rule 35 Mem., D.I. 215; Nov. 16, 2015 Aff., D.I. 232; Nov. 16, 2015 PCR Opening Br., D.I. 235; Apr. 14, 2016 Points and Authorities, D.I. 267; July 10, 2019 Suppl. Mem. for PCR, D.I. 322; Dec. 23, 2019 Rule 35 Mem., D.I. 355; Dec. 2, 2020 Double Jeopardy Mem., D.I. 376.

<sup>14</sup> See, e.g., July 17, 2013 Letter, D.I. 184; Mar. 27, 2014 Letter, D.I. 199; July 9, 2015 Letter, D.I. 227; Feb. 5, 2016 Letter, D.I. 252; Oct. 13, 2017 Letter, D.I. 295; May 31, 2019 Letter, D.I. 317; Dec. 11, 2020 Letter, D.I. 377; June 17, 2021 Letter, D.I. 387; June 16, 2022 Letter, D.I. 395; May 24, 2023 Letter, D.I. 419. Weber filed 100 of these *pro se*.

<sup>15</sup> Weber filed thirty-two of these *pro se*.

<sup>16</sup> First PCR Mot., D.I. 186; Second PCR Mot., D.I. 308. This number includes amended or supplemental motions for postconviction relief, of which Weber has filed three. See Nov. 16, 2015 Am. PCR Mot., D.I. 234; Mar. 24, 2017 Am. PCR Mot., D.I. 281; July 1, 2019 Suppl. PCR Mot., D.I. 320.

<sup>17</sup> First Rule 35(a) Mot., D.I. 172; Second Rule 35(a) Mot., D.I. 176; Third Rule 35(a) Mot., D.I. 214; Fourth Rule 35(a) Mot., D.I. 251; Fifth Rule 35(a) Mot., D.I. 354; Def.'s Rule 35(a) Mot., D.I. 422.

<sup>18</sup> June 8, 2020 Rule 35(b) Mot., D.I. 366. The remaining thirty-two motions sought a wide range of relief, including: extension of time, habeas corpus, evidentiary hearing, etc.

<sup>19</sup> Supr. Ct. Mandate, Mar. 13, 2023, D.I. 414; see also *Weber v. State*, 294 A.3d 63 (Del. 2023). See *State v. Weber*, 2022 WL 2112949 (Del. Super. June 8, 2022) [hereinafter *Weber III*].

Discretion”).<sup>20</sup> On May 24, 2023, the Court requested a Response from the State;<sup>21</sup> however, before the State was able to file its Response, Weber filed another motion, titled “Motion for Correction of Illegal Sentence (“Rule 35(a) Motion”).<sup>22</sup> After the State filed its Response to Weber’s Motion for Judicial Discretion,<sup>23</sup> Weber filed two more motions, titled “Motion for Evidentiary Hearing”<sup>24</sup> and “Motion to Seal Record” (“Motion to Seal”),<sup>25</sup> as well as his Reply to the State’s Response (“Reply”).<sup>26</sup>

### **III. ANALYSIS**

#### **A. Weber’s Motion for Judicial Discretion**

In his Motion for Judicial Discretion, Weber argues that Senate Concurrent Resolution No. 32 (“SCR 32”) grants the Court “judicial discretion [to] order his immediate release from confinement.”<sup>27</sup> He argues that SCR 32 vests the courts with “increased judicial discretion in the stacking of sentences,” so the Court should use its “discretion” to “unstack” his sentence so it could be served concurrently.<sup>28</sup> He

---

<sup>20</sup> Def.’s Mot. for Judicial Discretion, D.I. 417.

<sup>21</sup> Letter Order Seeking State’s Resp., D.I. 420. Prior to that, Weber filed three letters and an additional copy of his Motion for Judicial Discretion. *See* Weber’s Apr. 28, 2023 Letter, D.I. 416; Weber’s May 19, 2023 Letter, D.I. 417; Weber’s May 24, 2023 Letter, D.I. 419; Copy of Def.’s Mot. for Judicial Discretion, D.I. 418.

<sup>22</sup> Def.’s Rule 35(a) Mot., D.I. 422.

<sup>23</sup> State’s Resp., D.I. 421.

<sup>24</sup> Def.’s Mot. for Evid. Hr’g, D.I. 424.

<sup>25</sup> Def.’s Mot. to Seal, D.I. 426.

<sup>26</sup> Def.’s Reply, D.I. 425.

<sup>27</sup> Def.’s Mot. for Judicial Discretion at 1, D.I. 417.

<sup>28</sup> *Id.* ¶¶ 2-5.

claims that his sentence was never authorized by the Legislature, and his sentences for Attempted Carjacking First Degree and Attempted Robbery First Degree were unfairly “stacked,” forcing him to serve his sentences consecutively.<sup>29</sup> Weber states that had the Court made his sentences concurrent, his term of confinement would have already expired.<sup>30</sup> In his Reply, Weber also argues that his sentence is illegal under the habitual offender statute and on double jeopardy grounds.<sup>31</sup>

On its face, Weber’s Motion for Judicial Discretion appears to be based solely on authority he believes flows from SCR 32; however, at its core, Weber’s motion asks the Court to take action with respect to his sentence, which could fall within the purview of Superior Court Criminal Rule 35. The Court generally affords *pro se* litigants some degree of lenience in the filing of their motions; thus, the Court will address his motion both as it is written and under Rule 35.<sup>32</sup>

1. SCR 32 is not an appropriate avenue through which Weber can challenge his sentence.

Weber asks the Court to order his immediate release from confinement based

---

<sup>29</sup> *Id.* ¶¶ 1-2.

<sup>30</sup> *Id.* ¶ 5.

<sup>31</sup> Def.’s Reply ¶¶ 12-23, D.I. 425.

<sup>32</sup> *State v. Bass*, 2003 WL 21538107, at n.16 (Del. Super. May 2, 2003), *aff’d*, 829 A.2d 935 (Del. 2003) (granting the *pro se* defendant “more leniency in articulating his legal arguments in support of his grounds for relief”); *see also Vick v. Haller*, 522 A.2d 865, 1987 WL 36716, at \*1 (Del. Mar. 2, 1987) (TABLE) (holding that *pro se* filings, “however inartfully pleaded, may be held to a somewhat less stringent technical standard than formal pleadings drafted by lawyers”). *See also Weber III*, at \*2 (where the Court proceeded to hear the defendant’s motions as if raised under Superior Court Criminal Rule 35(a) and 35(b) even though it was unclear under which rule his motion was raised).

on discretion granted to it by SCR 32.<sup>33</sup> SCR 32 is not a piece of legislation “authorizing” any type of action by the Courts. Rather, it is a proclamation issued by the General Assembly naming April 2023 “Second Chance Month” and recognizing the State’s efforts to reform its criminal justice system.<sup>34</sup> Because SCR 32 does not vest any additional authority in the Court, Weber’s argument is without merit.

2. Weber is not entitled to a correction of sentence under Rule 35(a) because his sentence is not illegal.
- 

Weber’s Motion for Judicial Discretion alludes to the illegality of his sentence and suggests that “these dual punishments were not authorized by the Legislature.”<sup>35</sup> In his Reply, Weber expounds on his argument, claiming that his sentence is illegal because (1) the Court exposed him to double jeopardy by sentencing him on both Attempted Carjacking First Degree and Attempted Robbery First Degree; (2) one of the predicate offenses used to classify him as a habitual offender was “unchallengeable;” and (3) he should not have been sentenced as a habitual offender under 11 *Del. C.* § 4214(a)(2004) because subsection (a) does not include inchoate offenses.<sup>36</sup>

Superior Court Criminal Rule 35(a) governs motions for correction of an

---

<sup>33</sup> See Def.’s Mot. for Judicial Discretion, D.I. 417.

<sup>34</sup> Del. S. Con. Res. 32, 152nd Gen. Assem. (2023).

<sup>35</sup> Def.’s Mot. for Judicial Discretion ¶ 1, D.I. 417.

<sup>36</sup> *Id.* ¶¶ 12-23.

illegal sentence.<sup>37</sup> Unlike Rule 35(b), a motion for correction of illegal sentence is not subject to any procedural bars, and “the court may correct an illegal sentence at any time.”<sup>38</sup> A sentence is illegal under Rule 35(a), if it:

[E]xceeds statutor[y] ... limits, violates double jeopardy, is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to its substance, or is a sentence that the judgment of conviction did not authorize.<sup>39</sup>

Rule 35(a) serves a narrow function: it only allows the Court to correct illegal sentences.<sup>40</sup> It does permit defendants to “re-examine errors occurring at the trial or other proceedings prior to the imposition of the sentence.”<sup>41</sup>

All of Weber’s arguments have previously been addressed by this Court and the Supreme Court: Weber was not subject to double jeopardy when he was sentenced to both Attempted Carjacking First Degree and Attempted Robbery First Degree;<sup>42</sup> it was within the Legislature’s intent that an individual could be convicted of and sentenced to both carjacking and robbery;<sup>43</sup> and Weber’s 2001 Forgery

---

<sup>37</sup> Super. Ct. Crim. R. 35(a).

<sup>38</sup> *Id.*

<sup>39</sup> *State v. Yarborough*, 2020 WL 502386, at \*3 (Del. Super. Jan. 30, 2020) (citing *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998)) (internal quotation marks omitted).

<sup>40</sup> *Brittingham*, 705 A.2d at 578.

<sup>41</sup> *Id.*

<sup>42</sup> See Dec. 15, 2010 Letter Order at 4, D.I. 158; *State v. Weber*, 2014 WL 4167492, at \*4 (Del. Super. July 29, 2014) [hereinafter *Weber IV*]; *Weber III*, at \*3-5. See also *Weber II*, at 278. The Supreme Court considered a separate double jeopardy argument in its May 2015 decision, ultimately finding Weber’s argument without merit. *Weber v. State*, 113 A.3d 1081, 2015 WL 2329160, at \* 3 (Del. May 12, 2015) (TABLE) [hereinafter *Weber V*].

<sup>43</sup> Dec. 15, 2010 Letter Order at 4, D.I. 158; *Weber III*, at \*3-5.



Second Degree conviction was properly considered as a predicate offense under the habitual offender statute.<sup>44</sup> With respect to Weber’s argument that an inchoate offense does not qualify as a triggering offense under 11 *Del. C.* § 4214(a)(2004), although neither court addressed the *merits* of his argument, both the Superior Court and the Supreme Court have held that the question is outside the narrow scope of Rule 35(a).<sup>45</sup>

3. Weber’s Motion for Judicial Discretion is procedurally barred as untimely and repetitive.

---

If the Court considers Weber’s Motion for Judicial Discretion as a motion for modification of sentence under Rule 35(b), his motion fails. Rule 35(b) governs motions for modification or reduction of sentence.<sup>46</sup> “Under Rule 35(b), a motion for sentence modification must be filed within ninety days of sentencing, absent a showing of ‘extraordinary circumstances.’”<sup>47</sup> Rule 35(b) also mandates that “[t]he [C]ourt will not consider repetitive requests for reduction of sentence.”<sup>48</sup> “[T]his bar

---

<sup>44</sup> *Weber I*, at 158-160; *State v. Weber*, 2017 WL 3638209, at \*3 (Del. Super. Aug. 22, 2017); Mar. 6, 2018 Order ¶ 4, D.I. 301; *Weber v. State*, 197 A.3d 492, 2018 WL 5993473, at \*1 (Del. Nov. 13, 2018) (TABLE); *Weber v. State*, 213 A.3d 1195 (Del. 2019).

<sup>45</sup> *Weber IV*, at \*3 (dismissing Weber’s claim because it was “outside the scope of Rule 35 and could, on that ground alone, be denied”); *Weber V*, at \* 3 (declining to review Weber’s claim because it falls “outside the limited scope of a Rule 35 motion”); *see also infra* Section III.C.

<sup>46</sup> Super. Ct. Crim. R. 35(b).

<sup>47</sup> *Id.*; *Croll v. State*, 2020 WL 1909193, at \*1 (Del. Apr. 17, 2020) (TABLE) (affirming the Superior Court’s denial of a motion for modification of sentence where the motion was repetitive and filed beyond the 90-day limit); *see Hewett v. State*, 2014 WL 5020251, at \*1 (Del. Oct. 7, 2014) (“When a motion for reduction of sentence is filed within ninety days of sentencing, the Superior Court has broad discretion to decide whether to alter its judgment.”).

<sup>48</sup> Super. Ct. Crim. R. 35(b) (emphasis added).

is absolute and flatly ‘prohibits repetitive requests for reduction of sentence.’”<sup>49</sup>

Weber’s motion is procedurally barred. First, Weber’s motion is untimely. Weber was convicted and sentenced more than thirteen years ago, which is clearly outside the rule’s ninety-day mandate. Secondly, Weber’s motion is repetitive.<sup>50</sup> Thus, Weber’s motion is without merit.

## **B. Weber’s Motion for Evidentiary Hearing**

When he filed his Reply to the State’s Response to his Motion for Judicial Discretion, Weber contemporaneously filed a Motion for Evidentiary Hearing.<sup>51</sup> Weber’s rationale is based *in toto* on his assertion that the differences between the arguments raised in the State’s Response and the arguments raised in his Reply make it “palpably evident [that] an evidentiary hearing would be appropriate in this matter.”<sup>52</sup>

As discussed above, under the lens of Rule 35(a), the Court finds no merit in Weber’s argument that his sentence is illegal.<sup>53</sup> Therefore, an evidentiary hearing is not warranted. Similarly, because the Court finds that Weber’s Motion for Judicial

---

<sup>49</sup> *State v. Redden*, 111 A.3d 602, 609 (Del. Super. 2015) (quoting *Thomas v. State*, 2002 WL 31681804, at \*1 (Del. Nov. 25, 2002)).

<sup>50</sup> Weber filed his first motion seeking a modification of sentence pursuant to Rule 35(b) on June 8, 2020. Def.’s First Rule 35(b) Mot., D.I. 366. The Court denied that motion on June 8, 2022. *Weber III*, at \*3-5.

<sup>51</sup> Def.’s Mot. for Evid. Hr’g, D.I. 424.

<sup>52</sup> *Id.* at 1.

<sup>53</sup> *See supra* Section III.A.2.

Discretion is procedurally barred as untimely and repetitive under Rule 35(b),<sup>54</sup> there is no need for an evidentiary hearing.

### **C. Weber's Motion for Correction of Sentence**

On June 20, 2023, Weber filed a separate Rule 35(a) Motion.<sup>55</sup> In it, Weber argues that his sentence for Attempted Robbery First Degree is illegal because it was “not authorized by the Legislature, constitutes a retroactive judicial expansion of his sentence, is constitutionally vague and ambiguous, and violates the federal constitutional protections as defined by the United States Supreme Court.”<sup>56</sup> He argues that he should never have been sentenced to 25 years of Level V time because neither the statute nor the Legislature intended inchoate offenses, like Attempted Robbery First Degree, to serve as a triggering offense under 11 *Del. C.* § 4214(a)(2004).<sup>57</sup> Weber's claims are outside the scope of Rule 35(a) and the Court

---

<sup>54</sup> *See supra* Section III.A.3.

<sup>55</sup> Def.'s Rule 35(b) Mot., D.I. 422. In his Rule 35(a) Motion, Weber raises the same claim regarding he raised in his Reply regarding 11 *Del. C.* § 4214(a)(2004) and inchoate crimes as triggering offenses. *See supra* Section III.A.

<sup>56</sup> Def.'s Rule 35(b) Mot. ¶ 2, D.I. 422. As enumerated in his Motion, Weber's claims are as follows:

- 16) 11 *Del. C.* §4214(a)(2004) does not authorize an enhanced sentence for Weber's inchoate offense.
- 17) Notwithstanding ¶ 16, the statute is unconstitutionally vague and ambiguous.
- 18) The execution of 11 *Del. C.* § 4214 (a)(2004) upon Weber constitutes an illegal retroactive judicial expansion.
- 19) 11 *Del. C.* §4214(a)(2004) fails to provide Weber fair warning.
- 20) The statute does not satisfy the “clear intent” and “authorization” rule.
- [21]) The statute fosters arbitrary, erratic, and discriminatory enforcement.
- [22]) The statute actually resulted in prosecutorial overreach and abuse.

*Id.* ¶¶ 16-21.

<sup>57</sup> *Id.*

will not address his motion on its merits.

As a threshold matter, Weber has already raised this argument in a prior motion, and both the Supreme Court and the Superior Court determined that Weber's claims are outside the scope of the rule.<sup>58</sup> The purpose of Rule 35(a), as stated above, is to correct an illegal *sentence*, not to re-examine potential errors occurring at proceedings prior to the imposition of a defendant's sentence. Here, after Weber's second trial, the State moved to declare Weber a habitual offender pursuant to 11 *Del. C.* § 4214(a)(2004).<sup>59</sup> The Court held a hearing on December 17, 2010, and subsequently declared Weber a habitual offender.<sup>60</sup> The Court then sentenced Weber to 25 years of unsuspended Level V time with credit for 2 years and 352 days previously served.<sup>61</sup>

Though he may claim otherwise, Weber does not argue the illegality of his sentence itself, but his status as a habitual offender. This was determined *before*

---

<sup>58</sup> *Weber IV*, at \*3; *Weber V*, at \* 3.

<sup>59</sup> *See generally* State's Mot. to Declare Def. Habitual Offender, D.I. 143. The State filed its motion on July 16, 2010. *Id.*

<sup>60</sup> Habitual Offender Hr'g, D.I. 159; *Weber IV*, at \*3.

<sup>61</sup> *See* Dec. 17, 2010 Sent. Order, D.I. 160. The Court later issued an amended order, giving Weber credit for additional time served. *See supra* note 11. Under 11 *Del. C.* § 4214(a)(2004):

[A]ny person sentenced pursuant to this subsection shall receive a minimum sentence which shall not be less than the statutory maximum penalty provided elsewhere in this title for the 4th or subsequent felony which forms the basis of the State's petition to have the person declared to be a[] habitual criminal.

Attempted Robbery First Degree is a Class B felony. *See* 11 *Del. C.* § 832(a)(2004). Under 11 *Del. C.* § 4214(a)(2004), the Court was required to impose a sentence no less than the maximum penalty provided for by 11 *Del. C.* § 4205(b)(2). The maximum sentence provided for a Class B felony is 25 years, which is what the Court imposed here. 11 *Del. C.* § 4205(b)(2).

Weber was sentenced; therefore, it falls outside the scope of Rule 35(a).<sup>62</sup>

#### **D. Weber's Motion to Seal**

On July 12, 2023, Weber filed another motion, his Motion to Seal.<sup>63</sup> Therein, Weber indicates that he intends to file two more motions with the Court, and in order to do so, he claims he needs to file a decision from the Court on the Judiciary.<sup>64</sup> Weber acknowledges that proceedings, records, and decisions from the Court on the Judiciary are confidential, but asks that the Court grant him permission to file one such decision<sup>65</sup> on the condition that it be filed under seal, pursuant to Superior Court Criminal Rule 55.<sup>66</sup>

Rule 55 provides for the form and manner in which records in criminal

---

<sup>62</sup> While the Court sympathizes with Weber, the Court is bound by the Superior Court Rules of Criminal Procedure and the law of the case. The Supreme Court and this Court have already determined that Weber's argument is not subject to review under Rule 35(a), and this Court is bound by that. The Supreme Court suggested to Weber that his concerns must be addressed through a motion for postconviction relief pursuant to Rule 61. *See Weber V*, at \* 3 ("If this claim can be addressed post-conviction, it must be raised in an application under Rule 61, subject to the procedural bars and other provisions of that rule.") Weber, however, chose not to raise his argument in either of his Rule 61 motions. *See* First PCR Mot., D.I. 186; Second PCR Mot., D.I. 308. Even assuming *arguendo* that the Court could consider the merits of his argument at this stage, as the Court has already stated, prior to Weber's sentencing, that "the Delaware Supreme Court had held . . . that a conviction of an attempt to commit a felony is treated as a qualifying felony for habitual offender purposes." *Weber IV*, at \*3. *See, e.g., Murphy v. State*, 905 A.2d 747 (Del. 2006) (finding that the defendant qualified as a habitual offender following his conviction for Attempted Delivery of Cocaine); *Harris v. State*, 840 A.2d 1242, 1243-44 (Del. 2004) (requiring the Superior Court to impose the statutory maximum sentence where the defendant was convicted of Attempted Robbery First Degree and declared a habitual offender); *Shockley v. State*, 854 A.2d 1159, 2004 WL 1790198, at \*4 (Del. Aug. 2, 2004) (TABLE) (upholding the defendant's sentence as a habitual offender for Attempted Burglary Third Degree).

<sup>63</sup> Def.'s Mot. to Seal, D.I. 426.

<sup>64</sup> *Id.*

<sup>65</sup> C.J. No. 3, 2023.

<sup>66</sup> Def.'s Mot. to Seal, D.I. 426.

proceedings within the Superior Court shall be kept.<sup>67</sup> Under the rule, “[n]o record shall be kept under seal except as provided by statute or these rules, or by order of the court for good cause.”<sup>68</sup>

Under Court on the Judiciary Rule 17, “[a]ll hearings and proceedings of the . . . Court shall be private and all records, except a final order of suspension, removal, or retirement shall be confidential, unless the Court [on the Judiciary] shall otherwise order on request of the judicial officer involved.”<sup>69</sup>

Though Rule 55 grants the Court discretion to seal certain records or documents upon a showing of good cause, this rule applies only to the Superior Court. Under Court on the Judiciary Rule 17, however, the Court on the Judiciary and the judicial officer involved are the only parties who may waive confidentiality with respect to a decision issued by the Court. The Superior Court does not have jurisdiction to circumvent Rule 17, or the confidentiality protected thereby. Weber may not attempt to use Superior Court rules to circumvent the Court on the Judiciary and file an otherwise confidential decision.

#### IV. CONCLUSION

For all the reasons stated above, Weber’s Motion for Judicial Discretion is **DENIED**, Weber’s Motion for Evidentiary Hearing is **DENIED**, Weber’s Rule

---

<sup>67</sup> Super. Ct. Crim. R. 55.

<sup>68</sup> *Id.* at (a).

<sup>69</sup> Ct. Jud. R. 17.

35(a) Motion is **DENIED**, and Weber's Motion to Seal Record is **DENIED**.

**IT IS SO ORDERED.**

/s/ Jan R. Jurden

Jan R. Jurden, President Judge